

## **NOTICE OF PROPOSED REGULATORY ACTION**

### **California Code of Regulations Title 15, Crime Prevention and Corrections Department of Corrections and Rehabilitation**

**NOTICE IS HEREBY GIVEN** that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Section 12838.5 and Penal Code (PC) Section 5055, and the rulemaking authority granted by PC Section 5058, in order to implement, interpret and make specific PC Section 2602, proposes to amend sections 3351 and 3364 and to adopt new sections 3364.1 and 3364.2 of the California Code of Regulations (CCR), Title 15, Division 3, concerning Involuntary Psychiatric Medication.

#### **PUBLIC HEARING:**

Date and Time: **September 8, 2014 – 9:00 a.m. to 10:00 a.m.**

Place: Department of Corrections and Rehabilitation  
Kern Room  
1515 S Street – North Building  
Sacramento, CA 95811

Purpose: To receive comments about this action.

#### **PUBLIC COMMENT PERIOD:**

The public comment period will close September 8, 2014 at 5:00 p.m. Any person may submit public comments in writing (by mail, by fax, or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the CDCR, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 324-6075; or by e-mail at [RPMB@cdcr.ca.gov](mailto:RPMB@cdcr.ca.gov) before the close of the comment period.

#### **CONTACT PERSON:**

Please direct any inquiries regarding this action to:

**Timothy M. Lockwood, Chief  
Regulation and Policy Management Branch  
Department of Corrections and Rehabilitation  
P.O. Box 942883, Sacramento, CA 94283-0001  
Telephone (916) 445-2269**

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

**D. Hawkins  
Regulation and Policy Management Branch  
Telephone (916) 445-2314**

Questions regarding the substance of the proposed regulatory action should be directed to:

**Bill Davies  
Department of Corrections and Rehabilitation  
(916) 324-1849**

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:**

PC Section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations.

PC Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections, in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management, and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR.

PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

This action:

- Amends Chapter 1, Subchapter 4, Articles 8 and 9 of the CCR, Title 15, Division 3 to implement, interpret and make specific PC Section 2602. Enactment of PC Section 2602 terminated the permanent injunction stemming from the *Keyhea v. Rushen* decision and replaced it with a statutory scheme governing the administration of involuntary psychiatric medication upon individuals housed in CDCR facilities.
- Amends sections 3351 and 3364 of the CCR, Title 15, Division 3 concerning Involuntary Psychiatric Medication.
- Adopts sections 3364.1 and 3364.2 into CCR, under Chapter 1, Subchapter 4, Articles 8 and 9 concerning Medical and Dental Services/Mental Health Services.
- Provides definitions for terms used in PC Section 2602 and specifies standardized statewide criteria for evaluation of an inmate's mental condition.
- Provides authority and direction to CDCR staff for proper identification of inmates who meet criteria for psychiatric intervention in a correctional setting, so that all institutions follow the same standardized set of procedures.
- Establishes that:
  - A new timeline between the start of medication and the hearing in front of an Administrative Law Judge (ALJ) has been revised from 47 days to 21 days. Emergency initial hearings may be heard on an expedited basis if patient care would benefit;
  - Inmates will have the right to be given notice when CDCR is seeking to renew a court order, as well as the right to file an objection to an institution's request to medicate the inmate prior to an initial ALJ hearing; and,
  - The Department gained the right to add a basis for a court order if the inmate's serious illness began to manifest in new ways.

#### **SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS:**

The proposed regulatory action will benefit CDCR staff and inmates by providing direction to staff for proper identification of inmates who meet the criteria for psychiatric intervention in a correctional setting, and using the least restrictive alternative. A standardized set of procedures regarding forms, inmate rights, service of documents, hearing procedures, and documentation of the involuntary medication process will be followed by all institutions. This will ensure consistent and fair treatment on a statewide basis concerning Involuntary Psychiatric Medication.

#### **EVALUATION OF CONSISTENCY / COMPATIBILITY WITH EXISTING REGULATIONS:**

The Department has determined that these proposed regulations are consistent and compatible with existing state laws and regulations. The Department reached this conclusion because these proposed regulations supplement existing regulations in order to comply with the statutes under PC Section 2602.

#### **FORMS INCORPORATED BY REFERENCE**

CDCR MH-7363 (Rev. 03/14), Involuntary Medication Notice  
CDCR MH-7366 (Rev. 03/14), Inmate Rights Notice - Involuntary Medication  
CDCR MH-7368 (Rev. 03/14), Renewal of Involuntary Medication Notice

#### **LOCAL MANDATES:**

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500 – 17630.

#### **FISCAL IMPACT STATEMENT:**

- Cost to any local agency or school district that is required to be reimbursed: *None*
- Cost or savings to any state agency: *None*

- Other nondiscretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

### **EFFECT ON HOUSING COSTS:**

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

### **SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:**

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

### **RESULTS OF ECONOMIC IMPACT ASSESSMENT:**

The Department has determined that the proposed regulations will have no impact on the creation of new or the elimination of existing jobs or businesses within California or affect the expansion of businesses currently doing business in California. As stated under the “Specific Benefits Anticipated by the Proposed Regulations” above (under the “INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW”), the regulations will benefit the health and welfare of California residents, as well as worker safety, specifically for inmates and CDCR staff, by allowing for earlier psychiatric intervention for those needing medication, which will result in a safer environment for employees as well as other inmates. Additionally, the proposed regulations set uniform standards for inmates meeting the criteria for psychiatric intervention and providing direction to correctional staff in dealing with these inmates’ needs.”

### **COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:**

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### **EFFECT ON SMALL BUSINESSES:**

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business because they are not affected by the internal management of state prisons.

### **CONSIDERATION OF ALTERNATIVES:**

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the proposed regulatory action. Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

### **AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:**

The Department has prepared, and will make available, the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website <http://www.cdcr.ca.gov>.

### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS:**

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the Department's contact person.

### **AVAILABILITY OF CHANGES TO PROPOSED TEXT:**

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.